IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Government Appeal No. 240 of 2007

(Old No. 2216/1984)

State of U.P. ....Appellant

Vs.

Vinod Kumar s/o late Sri Niman Lal
Resident of 15 Nehru Gram, Rishikesh,
District Dehradun .....Respondent

Learned A.G.A. for the appellant/State.

Dated: November 13, 2007

Hon'ble B. C. Kandpal, J.

This appeal has been preferred by the State against the judgment and order dated 7.5.1984 passed by Chief Judicial Magistrate, Tehri Garhwal thereby acquitting the accused/respondent from the offence under Section 411 of I.P.C.

Brief facts of the case, as per prosecution case, are that an F.I.R. was lodged by one Sri R.P. Chopra that Rs. 12,000/- was missing from the Almari inside the offence of Electricity Department. After investigation, the police primarily lodged F.I.R. under Section 380 I.P.C. and no accused were named in the said F.I.R. On 6.10.1978, an amount of Rs. 10,000/- was recovered from the pointing out of the accused Vinod Kumar and Rs. 2,000/- was recovered on the pointing out of the accused Ramesh. Accused Ramesh was subsequently absconded and accused Vinod Kumar was put to trial under Section 411 of I.P.C.

The trial court after hearing learned counsel for the parties and having perused the entire evidence available on record, acquitted the accused from the charges levelled against him under Section 411 of I.P.C. vide judgment and order dated 7.5.1984.

Feeling aggrieved by the aforesaid judgment and order, the appellant/State has preferred this appeal before this Court.

Heard learned counsel for the parties and perused the record.

The perusal of record reveals that F.I.R. was lodged with regard to theft of Rs. 12,000/-, but no one was named in the F.I.R. Later on, as per prosecution case, Rs. 10,000/- were recovered on the pointing out of accused-respondent Vinod Kumar, whereas Rs. 2,000/- were recovered on pointing out of co-accused Ramesh. The recovery has been made under Section 27 of Indian Evidence Act. The learned Magistrate has recorded the finding that the provisions of Section 27 of Indian Evidence Act have not been followed in the recovery proceedings. The statements of accused have not been reduced in writing upon which so called recoveries have been affected. Besides the recovery made under Section 27 of Indian Evidence Act no other evidence regarding committing theft has been produced in the present case. The learned Magistrate has rightly acquitted the accused-respondent in the case. Here, it may also be noted that primary offence of theft has not been established and even the offence of theft has not been reported against the accused-respondent.

I do not find any illegality and impropriety in the finding recorded by the learned Magistrate while acquitting the accused/respondent from the charges levelled against him.

I find no substance in the appeal filed by the State and the same is liable to be dismissed.

The appeal is accordingly dismissed. The impugned judgment and order dated 7.5.1984 passed by Chief Judicial Magistrate, Tehri Garhwal, is hereby confirmed.

(B.C. Kandpal, J.)

SP